

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID CODELL PRIDE, JR.,) Case No. 07-CV-1382-BEN (JMA)
CDC# H-61218)
Plaintiff,) **REPORT AND RECOMMENDATION RE**
v.) **DENYING OF DEFENDANTS' MOTION**
M. CORREA, et al.,) **TO DISMISS PLAINTIFF'S CLAIM**
Defendants.) **FOR INJUNCTIVE RELIEF**
)

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiff's Claim for Injunctive Relief ("the Motion"), brought pursuant to Fed. R. Civ. P. 12(b)(6) [Doc. No. 18].¹ Plaintiff, proceeding *pro se* and *in forma pauperis*, opposes the Motion. The Court found the Motion suitable for submission without oral argument. For the reasons set forth below, the Court recommends that the Motion be **DENIED**.

I. FACTUAL ALLEGATIONS

Plaintiff contends that, on August 9, 2004, while he was

¹The Motion was filed on behalf of all named Defendants in this action: M. Correa, Dr. Levin, T. Ochoa, and Dr. Santiago.

1 incarcerated at Pelican Bay State Prison, prisoner doctor J.E.
 2 Lazore (not a defendant in the action) prescribed for him an
 3 "extra mattress" (pursuant to a medical "chrono" with an
 4 expiration date of August 9, 2005) due to a permanent shoulder
 5 injury that causes Plaintiff considerable pain and sleeplessness.
 6 (Compl. at 6, 18.) On June 20, 2005, a prison doctor prescribed
 7 for him a "[right] knee sleeve" (pursuant to a medical chrono
 8 with an expiration date of June 19, 2006) due to a sports injury
 9 to Plaintiff's knee that causes it to slide out of joint
 10 resulting in pain and swelling. (Compl. at 4, 7, 17.)² At some
 11 time after those prescriptions were made, Plaintiff was
 12 transferred to Calipatria State Prison. (Compl. at 4.)

13 On January 3, 2006, Plaintiff was examined by Defendant Dr.
 14 Santiago at Calipatria, who stated to Plaintiff that he would
 15 request to the "chrono committee to get [his] chronos renewed and
 16 request an egg crate mattress and chronos for both knee braces,"
 17 as Plaintiff's left knee had "gotten worse" by compensating for
 18 the right knee. (Compl. at 7.) Dr. Santiago "explained to
 19 [Plaintiff] that Calipatria's no double mattress policy was the
 20 reason he'd request an egg crate mattress." (Compl. at 7-8.) On
 21 January 5, 2006, the chrono committee (of which Defendants M.
 22 Correa and Dr. Levin are members) denied the requested treatment.
 23 (Compl. at 7-8, 4-5.) The no double mattress policy is enforced
 24 by Defendant Warden T. Ochoa. (Compl. at 6.)

25 Plaintiff has explained to nurses at Calipatria that he is
 26 "in pain day and night." (Compl. at 5.) He has exhausted his

27
 28 ²Plaintiff states in the Complaint that "the same doctor," Dr.
 Lazore, prescribed the knee brace; however, the record indicates that
 another doctor did so. (See Compl. at 17.)

1 administrative remedies regarding these issues. (Compl. at 8.)
2 Plaintiff explained his situation to R.N. S. Garcia (not a
3 defendant to the action) on March 2, 2006. Nurse Garcia told
4 Plaintiff "that the chrono committee stated there was no proof of
5 [Plaintiff's] injuries or an examination. S. Garcia then called
6 the appeals coordinator and it was determined that an x-ray was
7 needed to determine [Plaintiff's] injury, however, no x-ray was
8 ever given." (Compl. at 8.)

9 Plaintiff is in constant pain and does not get enough sleep.
10 (Compl. at 8.) Because he has to sleep on his sides, shoulders,
11 or stomach on a two and one-half inch thick mattress on a steel
12 slab, he has poor blood circulation, is losing muscle mass, is
13 stressed and tired all the time, and cannot exercise because of
14 the pain and lack of rest. (Compl. at 8-9.) Plaintiff saw a
15 prison nurse on March 13, 2007, who prescribed pain pills.
16 (Compl. at 9.) He has taken so much ibuprofen that it no longer
17 works, and it is negatively affecting his stomach lining.
18 (Compl. at 9.)

19 **II. PROCEDURAL BACKGROUND**

20 On July 27, 2007, Plaintiff commenced this action by filing
21 a complaint pursuant to 42 U.S.C. § 1983. He alleges two claims
22 in his Complaint: First, that Defendants violated his right to
23 be free from cruel and unusual punishment under the Eighth
24 Amendment; and second, "right to medical care." (Compl. at 4-9.)
25 Plaintiff seeks an injunction preventing Defendants from denying
26 him medical treatment and accommodations and preventing
27 Defendants from retaliating against Plaintiff for bringing the
28 action, \$1,000,000 in general damages, and \$1,000,000 in punitive

1 damages. (Compl. at 11.)

2 **III. LEGAL STANDARDS**

3 **A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)**

4 A motion to dismiss for failure to state a claim pursuant to
5 Rule 12(b)(6) tests the legal sufficiency of the claims in the
6 complaint. A claim can only be dismissed if it "appears beyond
7 doubt that the plaintiff can prove no set of facts in support of
8 his claim which would entitle him to relief." Conley v. Gibson,
9 355 U.S. 41, 45-46 (1957); Hishon v. King & Spalding, 467 U.S.
10 69, 73 (1984). The court must accept as true all material
11 allegations in the complaint, as well as reasonable inferences to
12 be drawn from them, and must construe the complaint in the light
13 most favorable to the plaintiff. N.L. Indus., Inc. v. Kaplan,
14 792 F.2d 896, 898 (9th Cir. 1986); Parks Sch. of Bus., Inc. v.
15 Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).

16 The court looks not at whether the plaintiff will
17 "ultimately prevail but whether the claimant is entitled to offer
18 evidence to support the claims." Scheuer v. Rhodes, 416 U.S.
19 232, 236 (1974). Unless it appears beyond a doubt that the
20 plaintiff can prove no set of facts in support of his claim, a
21 complaint cannot be dismissed without leave to amend. Conley,
22 355 U.S. at 45-46; see also Lopez v. Smith, 203 F.3d 1122, 1129-
23 30 (9th Cir. 2000).

24 In addition, when resolving a motion to dismiss for failure
25 to state a claim, the court may not generally consider materials
26 outside the pleadings. Schneider v. California Dep't of
27 Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). "The focus
28 of any Rule 12(b)(6) dismissal . . . is the complaint." Id.

1 Nevertheless, the court may also consider documents or exhibits
 2 "whose contents are alleged in a complaint and whose authenticity
 3 no party questions." Branch v. Tunnell, 14 F.3d 449, 454 (9th
 4 Cir. 1994); see also Parks, 51 F.3d at 1484 ("When a plaintiff
 5 has attached various exhibits to the complaint, those exhibits
 6 may be considered in determining whether dismissal [is] proper"
 7 under Fed. R. Civ. P. 12(b) (6).

8 **IV. PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF IS NOT REQUIRED TO
 BE BROUGHT THROUGH THE RECEIVER OR CLASS REPRESENTATIVE OF
 THE PLATA CLASS ACTION**

10 On June 13, 2002, a "Stipulation for Injunctive Relief" was
 11 approved by Judge Thelton E. Henderson and filed in the United
 12 States District Court for the Northern District of California in
 13 Plata v. Davis, case no. C-01-1351-THE (the "Plata stipulation).
 14 (Dft.'s Request for Judicial Notice [doc. no. 18] at Exh. A.)³
 15 The Plata action is an open case on the Court's docket. The
 16 plaintiff class in Plata consists of all prisoners in the custody
 17 of the California Department of Corrections ("CDC") with serious
 18 medical needs, except those incarcerated at Pelican Bay State
 19 Prison. (Id. at ¶ 8.) Defendants in the Plata action include
 20 the Governor of California, Director of Finance; Youth and Adult
 21 Correctional Agency Secretary; Director of Corrections; and
 22 Deputy Director, Health Care Services Division, who are sued in
 23 their official and individual capacities as state officials
 24 responsible for the operation of the CDC. (Id. at ¶ 1.) The
 25 action alleges that plaintiffs are not receiving constitutionally

26
 27 ³While Plaintiff did not attach a copy of the Plata stipulation
 28 to the Complaint herein, he does attach it to his Opposition to the
 Motion, and it is plain that no party questions its authenticity.
 Accordingly, the Court takes judicial notice of the Plata stipulation
 as requested by Defendants. [Doc. No. 18.]

1 adequate medical care as required by the Eighth Amendment of the
2 U.S. Constitution and that defendants are not complying with the
3 Americans with Disabilities Act and § 504 of the Rehabilitation
4 Act. (Id. at ¶ 2.)

5 Generally, the Plata stipulation calls for implementation by
6 the CDC of "Policies and Procedures" designed to meet or exceed
7 the minimum level of care necessary to fulfill the defendants'
8 obligation to plaintiffs under the Eighth Amendment of the U.S.
9 Constitution. (Plata stipulation at ¶ 4.) The Plata stipulation
10 delineates a plan for implementation of these Policies and
11 Procedures at most California prisons during the calendar years
12 2003 through 2008. (Id.) Paragraph 29 of the Plata stipulation
13 states:

14 ... Neither the fact of this stipulation nor any
15 statements contained herein may be used in any other
16 case or administrative proceeding, except defendants,
17 CDC, or employees thereof reserve the right to use this
Stipulation and the language herein to assert issue
preclusion and res judicata in other litigation seeking
class or systemic relief.

18 (emphasis supplied.)

19 Defendants contend that Plaintiff cannot state a cognizable
20 claim for injunctive relief because any request for injunctive
21 relief in this action is barred by the Plata class action.

22 Defendants rely on the general proposition that individual suits
23 for injunctive and equitable relief from alleged unconstitutional
24 prison conditions cannot be brought where there is an existing
25 class action encompassing the same subject matter. McNiel v.
26 Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991); see also, Green v.
27 McKaskle, 770 F.2d 445, 446-447 (5th Cir. 1985); Goff v. Menke,
28 672 F.2d 702, 704 (8th Cir. 1982) ("[A] class member should not be

1 able to prosecute a separate equitable action once his or her
2 class has been certified.") Defendants urge that a plaintiff who
3 is a class member may assert any equitable or declaratory claims
4 he has, but must do so by either "urging further action through
5 the class representative ... or by intervention into the class-
6 action." Gilespe v. Crawford, 858 F.2d 1101, 1103 (5th Cir.
7 1998). Consequently, Defendants contend, Plaintiff should be
8 required to pursue any claim for injunctive relief through the
9 Receiver appointed in the Plata class action. (See Dft.'s
10 Request for Judicial Notice [doc. no. 18] at Exh. B, "Order
11 Appointing Receiver.")

12 Plaintiff opposes the Motion on several grounds. First,
13 Plaintiff contends that individuals seeking individual relief are
14 not barred by the Plata stipulation from doing so. He bases this
15 contention on the language of paragraph 29 of the Plata
16 stipulation itself, on an order issued by Judge Henderson (the
17 judge presiding in the Plata action) stating that an individual
18 may file a separate legal action seeking relief regarding medical
19 or non-medical matters, and on a letter he received from what
20 appears to be a nonprofit public interest law firm stating that
21 "defendants cannot use Plata to bar class members' claims for
22 individual injunctive relief or damages." (Opposition [doc. no.
23 25] at 2-4 & Exhs. A & B.) Second, Plaintiff contends that a
24 hearing of his case would not result in duplicative or
25 inconsistent judgments with the Plata class action. (Id. at 4.)
26 Third, Plaintiff notes that the defendants in the Plata class
27 action are different from those he sues here. Finally, he
28 asserts that the Plata stipulation is not binding on him so as to

1 bar this individual action because he was not given notice and
 2 opportunity to opt out of the class in Plata pursuant to Fed.
 3 Rule Civ. Proc. 23. (Id. at 4-8.)

4 In Tillis v. Lamarque, 2006 WL 644876 (N.D.Cal. March 9,
 5 2006), the district court considered this same issue regarding a
 6 prisoner who, while incarcerated at Salinas Valley State Prison,
 7 was severely beaten by four inmates and allegedly denied medical
 8 attention. Tillis brought an action against prison officials
 9 under 42 U.S.C. § 1983 alleging violations of the Eighth
 10 Amendment, among other things, and sought, in part, an injunction
 11 ordering that he be transferred from the prison he occupied at
 12 the time of the filing of the action to the California Medical
 13 Facility in Vacaville for treatment by physicians not affiliated
 14 with the CDC. Id. at *1-2. In denying defendants' motion to
 15 dismiss the claim for injunctive relief on the grounds that
 16 plaintiff must seek relief via his class representative in the
 17 Plata action, the court stated, "Plaintiff is seeking relief
 18 solely on his own behalf, and therefore does not fit into the
 19 stipulation's exception. Plata does not bar the injunctive
 20 relief sought by Tillis." Id. at * 9.

21 Like the Plaintiff in Tillis, Plaintiff Pride seeks relief,
 22 both injunctive and monetary, on behalf of himself alone.
 23 Plaintiff seeks no "class or systemic relief" and, accordingly,
 24 is not precluded from maintaining his claim for injunctive
 25 relief. (See Plata stipulation, ¶ 29.) Specifically, the
 26 injunction sought by Plaintiff - to prevent defendants Correa,
 27 Levin, Ochoa, and Santiago "from denying [Plaintiff] medical
 28 treatment and accommodations; also preventing defendants [from

1 engaging in] any and all retaliations/hardships" - clearly seeks
2 relief solely for himself. (Compl. at 11.) The Plata
3 stipulation sets forth guidelines and a schedule for
4 implementation of health care policies and procedures and the
5 rehabilitation of prisoner medical care at the systemic level.
6 Any injunctive relief awarded to Plaintiff through this action
7 will not contradict or undermine the systemic relief mandated by
8 the Plata stipulation. Accordingly, the Plata stipulation does
9 not bar Plaintiff's claim for injunctive relief in this action.

10 Accordingly, the Court recommends that Defendants' Motion to
11 Dismiss Plaintiff's Claim for Injunctive Relief be **DENIED**.

12 **V. CONCLUSION AND RECOMMENDATION**

13 For the reasons set forth above, this Court recommends that
14 the District Judge issue an Order **DENYING** Defendants' Motion to
15 Dismiss Plaintiff's Claim for Injunctive Relief.

16 This report and recommendation will be submitted to the
17 Honorable Roger T. Benitez, United States District Judge,
18 pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any party
19 may file written objections with the Court and serve a copy on
20 all parties on or before July 3, 2008. The document should be
21 captioned "Objections to Report and Recommendation." Any reply
22 to the Objections shall be served and filed on or before July 31,
23 2008. The parties are advised that failure to file objections
24 within the specified time may waive the right to appeal the

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1 district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
2 Cir. 1991).

3 **IT IS SO ORDERED.**

4 DATED: June 18, 2008

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6 Jam M. Adler
U.S. Magistrate Judge

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